**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition (M/S) No. 5050 of 2001.**
**(Old CMWP No. 6489 of 1988)**

Inder S/O Sri Thakur, R/O Lal Tappar, Majri Grant, Pargana Parwadun, District Dehradun ( since deceased) substituted by his L.R. 1/1 Chuhar Singh, S/O Inder, R/O Lal Tappar, Mazri Grant, Pargana Parwadun, District Dehradun.

***… Petitioner***

***Vs.***

1. The State of U.P. through the Collector, Dehradun.
2. The Additional Commissioner (Admn), Garhwal Mandal, Pauri.
3. The Prescribed Authority (Under the U.P. Imposition of Ceiling on Land Holdings Act, 1960), Dehradun.
4. Hari Kishan Lal.
5. Bal Kishan Lal,
6. Shyam Kishan Lal,
7. Brij Kishan Lal, No. 4 to 7 sons of Sri Ram Kishan R/O Arhat Bazar, Dehradun.

**…Respondents.**

**Sri Rajendra Dobhal, learned counsel for the petitioners.**
**Sri Atul Bansal, Brief Holder for the respondents-State.**
**Sri J.P.Joshi, Adv., learned counsel for Respondents 4, 5 and 7.**

**With**

**Writ Petition (M/S) No. 5051 of 2001.**
**(Old CMWP No. 6464 of 1988)**

1. Jogendra Singh S/O Sri Paras Ram,
2. Jaggu S/O Sri Paras Ram
3. Maya Ram,
4. Sushil Kumar,
5. Gurdas S/O Sri Dittu Ram
6. Bhag Singh (since deceased) represented through his L.R. 6/1 Pyare Lal, S/O Bhag Singh.
7. Tirhu Ram
8. Harish Chandra,
9. Lekh Ram, Sons of Sri Prabhu. All residents of village Majri Grant Pargana Parwadun, District Dehradun.

***… Petitioners.***

***Vs.***

1. The State of U.P. through the Collector, Dehradun.
2. The Additional Commissioner (Admn), Garhwal Mandal, Pauri.

3. The Prescribed Authority (Under the U.P. Imposition of Ceiling on Land Holdings Act, 1960), Dehradun.
4. Hari Kishan Lal.
5. Bal Kishan Lal,
6. Shyam Kishan Lal,
7. Bal Kishan Lal, sons of Sri Ram Kishan

**…Respondents.**

**Sri Rajendra Dobhal, learned counsel for the petitioners.**
**Sri Atul Bansal, Brief Holder for the respondents-State.**
**Sri J.P.Joshi, Adv., learned counsel for Respondents 4 to 7.**

**Date August 22, 2006**

**P.C.:Hon'ble B.S. Verma, J.**

**Restoration Application No. 8944/2006,**
**Delay Condonation Application No. 8945 of 2006**
**Delay Condonation Application No. 8941 of 2006 &**
**Application for setting aside abatement 8942/2006**
**In WPMS No. 5050 of 2001)**

**Substitution Application No. 8946 of 2006 in WPMS No. 5051 of 2001**

Heard learned counsel for the parties on the aforesaid applications and perused the record. The record shows that Writ Petition No.5050 of 2001 was dismissed for non-prosecution on 6.10.2004. The petitioners have moved restoration application with a prayer for recalling the order of dismissal, supported by affidavit. The application is also accompanied by delay condonation application. Reasons shown in the affidavit are sufficient to condone the delay and also to recall the order. Accordingly the order dated 6.10.2004 is hereby recalled and the case is restored to its original number. Both the applications are accordingly allowed.

The petitioner has further moved applications for setting aside abatement and to bring on record legal heir on account of death of petitioner Inder. The application is accompanied by delay condonation application in filing substitution Application as well as substitution Application with the prayer that the deceased petitioner be substituted by his legal heir Sri Chuhar Singh. Having considered the averments made in all these applications, which are not opposed, I am

of the view that in the interest of justice all these applications may be allowed. The delay is condoned. The abatement order is set aside and the substitution application is allowed. The petitioner Chuhar Singh be brought on record in place of petitioner Inder. The amendment be incorporated in the course of the day and the same has already been carried out.

On the request of learned counsel for the petitioner Sri Rajendra Dobhal, the record of Writ Petition No. 5051 of 2001 (M/S) Jogendra Singh and others Vs. State and others was taken up for hearing today along with the above writ petition no. 5050 of 2001. In this case Substitution Application moved the petitioners to substitute the name of Pyare Lal in place of deceased petitioner no.6 Bhag Singh was allowed vide Court's order dated 20-7-2006, but the petitioners could not incorporate necessary amendments so far. In the interest of justice, the petitioners are allowed to carry out necessary amendments in the course of the day, which has already been done. Both the parties are ready to argue the cases today on merit.

Since the controversy involved in these two writ petitions are similar, therefore, for the sake of convenience, they are being decided on merit by this common judgment.

In Writ Petition No. 5050 of 2001, the petitioner has challenged the order dated 18-2-1980 passed by the respondent no.3 (Annexure No.4) as well as order dated 25-02-1988 passed by the respondent No. 2 (Annexure No.5). Vide order dated 18.02.1980 the Competent Authority declared surplus vacant land measuring 29-82 acres in possession of the Khatedar Hari Kishan lal etc and his brothers under the provisions of the Imposition of Ceiling on Land Holdings Act 1960. The petitioner felt aggrieved by the order passed by the Competent Authority and went up in appeal before the Additional Commissioner (Administration) Pauri Garhwal, where the same was registered as Ceiling Appeal No. 21/1985-86 Inder Vs. State of U.P. and others.

Before appellate court, the petitioner had taken the stand that the disputed land was purchased by him from Harikishan Lal and others in the year 1954 for consideration of adequate amount and since then he has been in possession over the land in question. The name of the petitioner was entered in Class 9 in the revenue records. It was also contended that the limitation for eviction of the appellant had already expired and the suit land could not have been declared surplus. On the other hand, the State contended that there is no evidence on record to show that the land was purchased by the appellant-petitioner in the year 1954 from Harikishan Lal and the said Harkishan Lal himself was ***Sirdar*** over the land, therefore, he was not authorized to transfer the land. Ultimately, finding that the appellant failed to lead any evidence to substantiate his contention regarding purchase of land in the year 1954, therefore, the appeal was dismissed vide order dated 25-2-1988, hence the writ petition was filed.

In Writ Petition No.5051 of 2001 filed by Jogendra Singh and others, the order under challenge of the competent authority is the same, which is dated 18-2-1980. The petitioners having been aggrieved by the order of the competent authority went up in appeal which was registered as Ceiling Appeal No. 23 of 1985-86, Jogendra and others Vs. State of U.P. The contention of the appellant-petitioners was that they purchased the land from Harikishan Lal and others in the year 1954. All other contentions are similar as that of the above case. That appeal too met the same fate of dismissal on the ground that the petitioners could not prove their stand regarding purchase of land by any reliable evidence. Hence the writ petition no. 5051 of 2001 has been preferred.

It is not disputed that the petitioners could not lead any evidence to establish their title over the disputed land. It is admitted that no sale-deed was ever executed in favour of the petitioners, through they claimed to have purchased the land in suit from the landowner Harikishan Lal. It is also admitted to the petitioners that the

recorded tenure holders did not take any steps to get the sirdari rights converted into Bhumidhari rights, as alleged in paragraph no. 4 of the writ petitions.

In the counter affidavit filed by the State, it was contended that Sri Harikishan Lal had never executed any sale deed in favour of the petitioners and the land in question was never sold to petitioners, therefore, the petitioners cannot be treated owners of the suit land on account of their name being entered in Class-( and the Prescribed Authority rightly rejected the claim of petitioners disbelieving the alleged entry and declared the land of original tenure holder Sri Harikishan Lal as surplus vacant land.

I have heard the submissions of learned counsel for the petitioners Sri Rajendra Dobhal very patiently and have gone through the entire material on record. After having considered all the aspect of the case from al the four corners, I am not inclined to interfere in the orders under challenge for the following reasons.

***Firstly,*** as per admitted case of the petitioners, the original tenure holder Harikishan Lal and others were sirdar over the land in question and they could not obtain bhumidhari rights. Thus, in view of the admissions made by the petitioners, in the year 1954, when they claim to have purchased the land for consideration from Sirdar, the same cannot be said to be a valid transaction of immovable property for the simple reason only a bhumidhar with transferable right is entitled to transfer the land in suit.

***Secondly,*** the petitioners allege their continuous and interrupted possession over the land in dispute since 1954 and thus they perfected their title by adverse possession. This contention of the petitioners is entirely misconceived. At one place they alleged to have purchased the land for consideration in the year 1954 and that too without having executed any sale deed in their favour. Strangely

enough, they take stand of adverse possession. Not only this, they never claim their possession against the true owner and that too within the knowledge of the true owner.

***Thirdly,*** it is admitted to the petitioners that the tenure holder Hari Kishan Lal and others treated them as ***Bataidar*** and for this reason also, the case of the petitioners falls to the ground.

***Fourthly,*** the only stand of the petitioners is that Lekhpal who had been examined on behalf of the State had given statement that the petitioners were continuing in possession since 1375 Fasli, therefore, their claim stands proved. Only on the basis of statement of Lekhpal, no right, title or interest can be held to have been perfected in favour of the petitioners, unless such a statement is legally supported by documentary evidence.

***Lastly,*** though the plea of adverse possession has been taken, but even from a remote consideration, there is nothing favourable to the stand of the petitioners. It is pertinent to mention that if the petitioners had been in adverse possession for more than twelve years and that too without the consent of the original tenure holder, then the first entry regarding adverse possession ought to have been made in red ink as per provisions of the Land Record Manual and PA-10 must have been issued in that eventuality, the petitioners claim on the basis of adverse possession could be considered, but here the petitioners have come up with the case that they are purchasers of the land in question form Harikishan Lal, therefore, the stand taken by the petitioners is contradictory. It appears that the petitioners have come up before this Court with a lame stand just to confuse the Court only to suit their purpose. The learned Prescribed Authority as well as the appellate court rightly held the stand taken by the petitioners was not supported by the documentary evidence and they rightly disowned/ignored the Lekhpal’s statement, the same being not in conformity with the revenue record.

It may be added that the findings recorded by both the courts below are concurrent finding of fact and this Court, while exercising writ jurisdiction, cannot sit as a court of appeal so as to re-appreciate the evidence on record and come to a different conclusion.

Having considered the entire material on record from all the four corners, I find no perversity or manifest error of law in the impugned orders and the orders under challenge do not call for any interference. Both the writ petitions are devoid of merit and liable to be dismissed outright.

Both the writ petitions are hereby dismissed. No order as to costs.

Interim order dated 15-4-1988 passed in Writ Petition No. 5050 of 2001 and interim order dated 13-4-1988 passed in Writ Petition No. 5051 of 2001 passed by the Allahabad High Court are vacated.

**(B.S. Verma, J.)**

RCP